

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:04CR316
Plaintiff,)	
vs.)	ORDER
RICHARD GARZA,)	
Defendant.)	

This matter is before the Court on the Defendant's motion to reduce his sentence under Amendment 709 (Filing No. 273).

The Defendant pleaded guilty to Counts I and VIII of the Indictment. Count VIII sets out a criminal forfeiture offense, and Count I charged Garza with conspiracy to distribute and possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine. Garza was initially sentenced to 168 months, based on a total offense level of 30 and placement in criminal history category VI. (Filing Nos. 168, 169.) However, Garza was resentenced to 151 months based on a motion filed under Federal Rule of Criminal Procedure 35. (Filing No. 238.) Garza's sentence was affirmed on appeal. (Filing No. 269.)

Garza requests a reduced sentence based on changes to § 4A1.2(c) brought about through Amendment 709. Garza argues that Amendment 709 should lower his criminal history category from VI to III. Garza argues that 18 U.S.C. § 3582(c)(2) provides authority for the reduction.

18 U.S.C. § 3582(c)(2) provides that a sentence can be lowered if the sentencing range has been lowered by the Sentencing Commission through the process of revising the sentencing guidelines. Accordingly, U.S.S.G. § 1B1.10 governs the process of

determining which amendments to the guidelines are retroactive. Because Amendment 709 is not included in the list of retroactive amendments set out in U.S.S.G. § 1B1.10(c), Garza's sentence may not be lowered for the reasons raised in his motion. *United States v. Orozco*, 2008 WL 505376, at *1 (D. Kan. Feb. 21, 2008); *United States v. Cutright*, 2008 WL 320515, at *1 (S.D. Ill. Feb. 4, 2008); *United States v. Beasley*, 2007 WL 4390380, at *1 (S.D. Ill. Dec. 14, 2007).

IT IS ORDERED that the Defendant's motion to reduce his sentence under Amendment 709 (Filing No. 273) is denied.

DATED this 7th day of March, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge